

**BOARD OF APPEALS CASE NO. 4912**

**BEFORE THE**

**APPLICANT: Mountain Branch LLC**

**ZONING HEARING EXAMINER**

**REQUEST: Modification of Case 4762 to  
open golf course and restaurant to the  
public and variance to the height and  
setback requirements; Mountain, Singer  
and Stockton Roads, Joppa  
HEARING DATE: June 9, 1999**

**OF HARFORD COUNTY**

**Hearing Advertised**

**Aegis: 4/21/99 & 4/28/99**

**Record: 4/23/99 & 4/30/99**

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### **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Mountain Branch LLC, appeared before the Hearing Examiner requesting the following relief:

1. Modification of the special exception approval for a golf club and accessory uses granted in Board of Appeals Case No. 4762 pursuant to Sections 267-52 (B) and (C) of the Harford County Zoning Code located in the AG, Agricultural District to enable the restaurant located on the property to be open to the public generally and for the restaurant and golf course grounds to be used for non-golf related events, including wedding receptions, seated dinner receptions, cocktail parties, office parties, etc. (sometimes hereinafter the "Functions").
2. Modification of the site plan approved in Board of Appeals Case No. 4762 pursuant to Sections 267-52 (B) and (C) of the Code, including modification of the driving range/practice facility and construction of additional structures.
3. A variance pursuant to Section 267-11 of the Code from the provisions of Section 267-34(C) Table II to allow the modified clubhouse as shown on the site plan to be constructed with a maximum building height in excess of 30 feet (44 feet proposed).
4. If necessary, a variance pursuant to Section 267-11 of the Code from the provisions of Section 267-34(C) Table II to permit the golf course to be conducted with a minimum building or use setback of less than fifty (50) feet.

## Case No. 4912 - Mountain Branch LLC

The subject property is owned by Mountain Branch LLC (the "LLC"), Richard Godfrey and Kathleen Martin and is identified as follows:

MAP	GRID	PARCEL	Total Acreage	Subject Acreage	DESCRIPTION
60	2F	50	0.169	0.169	1817 Mountain Road
60	2F	320	3.78	3.78	1815 Mountain Road
60	2F	169	2.00	2.00	Rt. 152 near Jerusalem Road
61	2A	458	7.23	7.23	N. side Singer Road E. of Mountain
61	2A	457	7.63	7.63	N side Singer Road E. of Mountain
60	2F	346	3.861	3.861	Off of Mountain Road
60	2F	344	2.028	2.028	Off of Mountain Road
60	2F	*	3.07	0.667	2300 Singer Road
60	2F	53	46.395	46.395	1827 Mountain Road
61	2A	11	59.651	59.651	1702 Stockton Road
61	2A	10	59.91	59.91	1701 Stockton Road
60	1F	46	77.15	77.15	2001 Stockton Road
60	2F	51	1.35±	1.35±	1821 Mountain Road
60	2F	52	2.51±	1.297	1823 Mountain Road
60	2F	135	0.302±	0.302±	E S Rt. 152
60	2F	134	0.79±	0.79±	1811 Mountain Road
60	1F	54	4.4	1.79	N. side Stockton Road

\*Part of P162 will be assigned new parcel #

All of the subject parcels are zoned AG. The application was filed on March 10, and April 13, 1999.

Richard Godfrey, spokesperson for the Applicant testified. He stated that the subject property is the site of the proposed Mountain Branch Golf Course which was approved in Board of Appeals Case No. 4762. He indicated that the Applicant is requesting approval to open the restaurant located on the subject property to the public generally and to hold wedding receptions, dinner parties and other functions on the site. Also, he explained that the approved site plan must be modified as shown on the revised site plan.

## **Case No. 4912 - Mountain Branch LLC**

Mr. Godfrey testified that, if necessary, the Applicant was requesting a variance from the fifty (50) foot minimum building or use setback from adjacent residential lot. Finally, he indicated that he has requested a variance from the height requirements in the Zoning Code to allow the clubhouse to be built with a building height in excess of 30 feet (44 feet proposed). Other than the requested relief, no changes to the approved golf course use are being requested.

Mr. Godfrey testified that, since the original approval was granted, most of the subject property had been purchased by the LLC, an entity in which he holds an interest. He explained that the parcels not owned by the LLC will be leased to the LLC by himself and Mrs. Martin.

Mr. Godfrey explained that he did not become aware that changing the clubhouse design would be necessary until after he received approval in Case No. 4762. He noted that originally the existing barn building was proposed as the clubhouse. However, after discussing the matter with the other members of the LLC, who have extensive restaurant experience, he realized that it would be impractical and cost prohibitive to bring the building into compliance with current regulations of the health department, building code, ADA, etc. Therefore, he wants to raze the building and build the new clubhouse in its place. He noted that other upscale public golf courses in Harford County have restaurants which are open to the public. He testified that the golf course required a first rate restaurant which could not be accommodated in the building.

Mr. Godfrey stated that if the height variance is not granted the Applicant would suffer practical difficulty in that the clubhouse as designed could not be built. Mr. Godfrey testified that granting the Applicant's request would not cause harm to anyone.

Kevin McBride of MRA, an expert landscape architect, testified regarding site conditions. Using Applicant's Exhibits 1 and 2, he noted that the topography of the site is sloped and that the clubhouse is designed to fit into the hillside on the site. He testified that the proposed design of the clubhouse preserves as much of the natural terrain of the site as possible and avoids mass grading and soil disturbance.

## **Case No. 4912 - Mountain Branch LLC**

Using Exhibit 3, Mr. McBride pointed out that the proposed clubhouse would be in almost the same location and at almost the same elevation as the building.

Bob Gorman, an expert architect employed by Morris & Ritchie Associates, Inc., who designed the clubhouse testified that he was asked by the Applicant to design a structure with an agricultural design which would be compatible with the rural area and fit within the existing topography on the site. Using Exhibits, renderings of the proposed clubhouse, Mr. Gorman described how the design of the clubhouse incorporated features commonly found in agricultural buildings. In particular, he noted that the pitched roof gave the clubhouse an appearance similar to a barn. Mr. Gorman testified that the clubhouse will contain the cart storage area, and locker room on the basement level and restaurant, administrative offices and pro shop on the ground level. He explained that it is necessary to have a walk out rear elevation of the clubhouse building to accommodate golf cart storage.

Mr. Gorman testified that the clubhouse can not be relocated on the site or redesigned in a different style with a lower building height such that the variance would not be necessary and still meet the design criteria required by the Applicant. He noted that, in theory, a flat roof could be utilized for the clubhouse and still meet the height requirements. However, doing so would ruin the design, making the clubhouse incompatible with the design of agricultural buildings located in the area. Furthermore, in theory, the clubhouse could be made lower and longer or a second structure containing just cart storage could be built. However, these designs would be undesirable in that they would cause more site disturbance. Mr. Gorman said that fire-fighting apparatus will have access to the clubhouse and that granting the variance would not cause any fire hazard. He testified that in his opinion, no adverse impacts, visual or otherwise, would be created by granting the variance.

## **Case No. 4912 - Mountain Branch LLC**

Mickey Cornelius, an expert traffic consultant, employed by the Traffic Group, Inc., also testified on behalf of the Applicant. He indicated that he had testified on behalf of the Applicant in Case No. 4762 and had performed the traffic studies prepared in connection with the previous case. He testified that he had performed a revised traffic study to take into account that the restaurant in the new clubhouse would be open to the public. He pointed out that based on his revised traffic study, the intersection of MD Route 152 and Singer Road should be signalized. He noted that at the entrance to the golf course on Route 152, 10 foot wide shoulders existed which enabled traffic to bypass cars turning left into the entrance. He testified that based on his study, he recommended that an exclusive right turn lane on Singer Road at MD Route 152 be constructed.

Mr. Cornelius testified further that restaurants were low traffic generators and many golf courses include restaurants. As a result, standard trip generation rates for golf courses already include traffic generated by golf course restaurants. He noted that the peak traffic activity for restaurants is on the weekend or in the evening after the normal evening rush hour has been completed. Mr. Cornelius stated that in his opinion, based on his revised study, modification of the approved golf course as requested by the Applicant would not cause adverse traffic impacts. The report containing the findings which supported his opinion was introduced into evidence as Exhibit 6.

Denis Canavan, an expert land planner testified. Mr. Canavan also testified on behalf of the Applicant in Case No. 4762. He stated that in his opinion the requested modification to the approved special exception should be granted as it would not adversely affect the public health, safety and general welfare, would not result in dangerous traffic conditions and would not jeopardize the lives or property of people living in the neighborhood. He testified that no adverse impact would result from granting the Applicant's request. He noted that the Applicant was merely requesting modification of an approved golf course. He pointed out that variances to allow the golf course to be located less than 50 feet from adjacent residential lots had already been granted in Case No. 4762. He noted that except for the minor changes requested by the Applicant, the operation of the approved golf course would not change.

## **Case No. 4912 - Mountain Branch LLC**

Mr. Canavan stated that in his opinion, the Applicant met the burden of proof to justify the requested height variance for the clubhouse. Because the cart storage area of the clubhouse must be at a lower elevation than the front of the structure, the grade slopes to the rear of the structure. As a result, the maximum building height of the clubhouse as measured under the Zoning Code is increased. He testified that based on the testimony of Mr. Gorman and Mr. McBride, the site conditions and the desire to have a design compatible with the agricultural area and to avoid site disturbance justified the requested variance.

The Staff Report prepared by the Department of Planning and Zoning recommended approval with conditions.

Gloria Moon of 2519 Jerusalem Road testified. Ms. Moon attempted to testify on behalf of the Gunpowder Improvement Association, Inc. However, on cross examination she admitted that the Association owned no real property and that she had not provided any evidence that the Association had adopted a position in the case pursuant to its By-laws. Counsel for the Applicant conceded that Ms. Moon, individually, had standing, but objected to any testimony from Ms. Moon on behalf of the Association.

Ms. Moon stated that approval of the Applicant's request would allow commercialization of the area and make it easier for other property owners in the area to have their property rezoned. She indicated that in her opinion, the approval would change the neighborhood. She also objected to traffic which would be generated by the project. Finally, she objected to the razing of the building on the subject property, claiming it had historic value. Ms. Moon did not object to the height of the proposed clubhouse.

On cross examination, Ms. Moon admitted that she had performed no traffic study related to the Applicant's request. Furthermore, she conceded that the building was not recognized by any state, federal or local agency having jurisdiction over historic buildings as having any historic value whatsoever. She also admitted that the project would not bring public water and sewer lines to the area. Finally, she also conceded that the restaurant and golf course were already approved and that the Applicant's request was only a modification of the approved use.

## **Case No. 4912 - Mountain Branch LLC**

Alma Sproul of 1705 Singer Road testified that although she was not opposed to the Applicant's request, she asked that traffic impacts be studied very carefully by the Applicant in the development process.

On rebuttal, Denis Canavan testified that he had been involved in hundreds of piecemeal rezoning cases as a land planner. He testified that under Maryland law, approval of a special exception could not legally constitute change in a neighborhood which would justify a rezoning. He emphasized that no rezoning of the subject property was taking place. The subject property was and would continue to be zoned AG.

Richard Godfrey, testifying on recall, indicated that as a part of the permitting process for the golf course, the historical value of the building was investigated by the applicable government agencies. He testified that after careful study, it was determined that the building had no historic value. Mr. Godfrey pointed out that if that were not the case, he would not have received approval to build the golf course. Finally, he noted that prior to the hearing, a community meeting was held at the Mountain Christian Church to discuss his request. He indicated that all adjoining property owners were notified of the meeting. Mr. Godfrey stated that all persons in attendance indicated their support for his request.

### **CONCLUSION:**

The Applicant is requesting a modification of Board of Appeals Case No. 4762 pursuant to Section 267-52(B) and 267-52(C) of the Harford County Code, to allow the restaurant located on the property to be opened to the public generally and for the restaurant and golf course grounds to be used for non-golf related events. The Applicant is also requesting approval to modify the site plan pursuant to the same sections of the Code.

Section 267-52(B) and 267-52(C) of the Code provide as follows:

- A. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- B. Extension of any use or activity permitted as a special exception shall require further Board approval.

## **Case No. 4912 - Mountain Branch LLC**

**Section 267-9(I) of the Code provides in pertinent part that:**

**...(t)he Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood.**

**The Applicant is requesting a variance from Section 267- 34(C), Table II of the Harford County Code to construct a building with a building height in excess of 30 feet. The Applicant also requested a variance from the provisions of Section 267-34(C), Table II to allow the use to have a minimum building or use setback from any adjacent residential lot of less than fifty (50) feet in an AG District, if necessary. The Applicant is proposing a building height of 44 feet.**

**The Harford County Code authorizes variances, pursuant to Section 267-11, provided that the Board of Appeals finds that:**

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.**

**The Court of Appeals of Maryland in McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973) held that the following criteria are to be used for determining whether “practical difficulty” has been established:**

- 1. Whether strict compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the use of the property for a permitted purpose or render conformity with such restrictions unnecessarily burdensome.**
- 2. Whether a grant of the variance applied for would do substantial justice to the Applicant as well as other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.**
- 3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.**



## **Case No. 4912 - Mountain Branch LLC**

In the present Board of Appeals Case (No. 4912), the Applicant proposes to incorporate an additional parcel into the golf course (parcel 51), and to permit the facilities to be used by the general public as a restaurant with facilities for wedding receptions, seated dinner receptions, cocktail parties, and office parties. These uses are frequently incorporated in facilities for golf clubs and country clubs; however, they were not included in the Applicant's original request.

The Applicant meets all of the requirements for a Special Exception for a golf club. The additional parcel will be utilized for the driving range. The changes in the course layout do not create additional environmental impact or affect the conditions of the previous Board approval. The restaurant and associated uses are appropriate for this property. Access to the site is from a principal arterial road, MD Route 152 (Mountain Road) and adequate parking has been provided. Approval of the additional uses should not have greater impacts on the surrounding neighborhood than the golf course itself.

The variance to permit the golf course to be operated with a minimum building or use setback of less than fifty (50) feet were previously approved by the Board in Case No. 4762. No changes to the site plan which impact additional residential lots are proposed.

Based on the testimony presented and the Staff Report, the Hearing Examiner finds that the request to revise the site plan as proposed and allow the restaurant to be open to the public and to allow non-golf related functions on the site as described by the Applicant's witnesses would not adversely affect the public health, safety and general welfare, or result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The proposed changes to the site plan are minor and do not increase impacts. Ample on site parking will be provided and allowing the Functions, which are typically conducted at golf courses and country clubs, will not cause adverse impact.

## **Case No. 4912 - Mountain Branch LLC**

The proposed height of the clubhouse is partially due to the topography and required grading around the rear of the building to accommodate the development of the golf course. The design of the clubhouse and the topography of the site surrounding the clubhouse require that the rear elevation of the clubhouse which is used for golf cart storage must be lower than the front elevation. This raises building height as defined in the Code even though the building itself is at the same elevation. The golf course has already been approved. Parking and access to MD Route 152 have already been approved. These factors make the subject property unique.

The Hearing Examiner finds that denial of the height variance would unreasonably prevent the use of the subject property for a permitted use, i.e., use as a site for the clubhouse. Unless the building height requirement is relaxed, the clubhouse as designed could not be built and no lesser relaxation of the Code requirements would give substantial relief to the Applicant. The slope on the subject property described by Mr. McBride and Mr. Gorman is a topographical condition which causes practical difficulty to the Applicant. Without the requested variance, additional site disturbance or an undesirable flat roof building would result.

Therefore, it is the recommendation of the Hearing Examiner that the requested variance to exceed the maximum building height for the clubhouse to be built on the subject property to 44 feet be approved. It is, further, the finding of the Hearing Examiner that approval of the variance will not be substantially detrimental to adjacent properties or materially impair the purpose of the Code, based upon the evidence set forth in the Staff Report and introduced by the Applicant's witnesses. As Mr. McBride's testimony showed, the new clubhouse will be at virtually the same elevation and in the same location as the building which will be razed. The clubhouse has an attractive design and is compatible with the agricultural area in which it will be located.

## **Case No. 4912 - Mountain Branch LLC**

Regarding the standing of the Association, Maryland law is clear that in order for a homeowners association to have standing, it must have a property interest of its own - separate and distinct from that of its individual members - which may be affected by any of the alleged acts under attack. Citizens Planning and Housing Association, et al., v. County Executive of Baltimore County et al., 273 Md 333, 329 A.2d 681 (1974). Ms. Moon admitted on cross examination that the Association did not own any real property. Thus, under Maryland law, the Association has no standing in this case. Ms. Moon, however, does have standing to participate and the Hearing Examiner has taken her testimony into consideration.

The Hearing Examiner considered the concerns expressed by Ms. Moon regarding the historic status of the building. However, based on the staff report and the testimony of Mr. Godfrey, the Hearing Examiner finds that the building is not a historic structure and that razing the building to construct the new clubhouse is appropriate.

The Hearing Examiner also considered Ms. Moon's concerns over commercialization of the area and that approving the Applicant's request would somehow make it easier to rezone neighboring properties. However, it must be kept in mind that the project has already been approved. The Applicant is only requesting modifications to an approved golf course. No rezoning of the subject property is being requested. The property will remain zoned AG.


Furthermore, as testified to by Denis Canavan, approval of a special exception cannot constitute change justifying a rezoning. Anderson v Sawyer, 23 Md. App. 612, 329 A.2d 716 (1974). It is important to note that Ms. Moon did not testify in opposition to the height of the clubhouse, only that it was causing the removal of the building which she claimed had historical value.

**Case No. 4912 - Mountain Branch LLC**

Based on the evidence, it is the recommendation of the Hearing Examiner that the Applicant's request be approved subject to the following conditions:

1. A revised site plan be submitted for review and approval by the Department of Planning and Zoning.
2. The Applicant obtain all necessary permits and inspections for the golf course and all buildings.

Date JUNE 22, 1999

  
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L. A. Hinderhofer  
Zoning Hearing Examiner